

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:16-CV-180-CDP
)
CITY OF FERGUSON, MISSOURI,)
)
Defendant.)

STATUS CONFERENCE

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

DECEMBER 6, 2016

APPEARANCES:

Special Master: Clark Kent Ervin, Esq.
SQUIRE PATTON BOGGS

For Plaintiff: Jude J. Volek, Esq.
Amy Senier, Esq.
UNITED STATES DEPARTMENT OF JUSTICE

For Defendant: Aarnarian (Apollo) D. Carey, Esq.
LEWIS RICE LLC

Jared Lyons Hasten, Esq.
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(Produced by computer-aided mechanical stenography.)

1 (Proceedings commenced at 1:05 p.m.)

2 THE COURT: All right. Good afternoon. We are here
3 in the case of United States of America versus the City of
4 Ferguson. This is Case No. 4:16-CV-180, and we are here for a
5 status conference to discuss the progress of the actions under
6 the Consent Decree, and so I would ask counsel for the
7 Plaintiff to -- would you all please stand and identify
8 yourselves?

9 MR. VOLEK: Jude Volek for the United States.

10 MS. SENIER: Amy Senier for the United States.

11 THE COURT: All right. And for the City of Ferguson?

12 MR. HASTEN: Good afternoon, Your Honor. Jared
13 Hasten on behalf of the City of Ferguson.

14 THE COURT: All right.

15 MR. CAREY: Good afternoon, Your Honor. Apollo Carey
16 on behalf of the City of Ferguson.

17 THE COURT: And, Mr. Carey, you're now the City
18 Attorney; correct?

19 MR. CAREY: Yes, ma'am.

20 THE COURT: Are you going to participate as counsel
21 in the case?

22 MR. CAREY: I will, and I will be entering an
23 appearance.

24 THE COURT: Okay. That's what I was going to say.

25 MR. CAREY: Yes, Your Honor.

1 THE COURT: You should enter an appearance if you're
2 going to. Yeah. Okay. Thank you.

3 And we have the Monitor and some representatives from
4 the Monitoring Team. So, Mr. Ervin, would you introduce
5 yourself for the record also?

6 MR. ERVIN: Yes. Thank you, Your Honor. Good
7 afternoon. Clark Ervin, the Monitor. And two members of my
8 team, Kimberly Norwood and Natasha Tidwell.

9 THE COURT: All right. Thank you, all, for being
10 here.

11 Okay. So, Mr. Volek, do you want to -- I have a -- I
12 have the -- well, whoever wants to report. I don't know who
13 wishes to. I do have the Independent Monitor Initial Work
14 Plan that was filed. So I know some of what's going on, and
15 I -- who wants to go first in telling us what's going on here?

16 MR. VOLEK: If it was all right with Your Honor, we
17 thought we would follow the same format as last time and have
18 the City present and then have the United States present and
19 then hear from the Monitor.

20 THE COURT: That's fine with me. Is that okay with
21 you, all?

22 MR. HASTEN: That's fine with us, Your Honor.

23 THE COURT: Okay. That's fine.

24 Mr. Hasten, you may go ahead.

25 MR. HASTEN: Good afternoon, Your Honor. Before I

1 begin, there are certain members of the City that I'd like to
2 introduce.

3 THE COURT: Okay.

4 MR. HASTEN: They're in court today. I just saw him.
5 Mayor Knowles is present along with Councilwoman Ella Jones,
6 Councilwoman Laverne Mitchom, City Manager De'Carlton Seewood.

7 THE COURT: Would you all raise your hands so I can
8 see who's who?

9 Okay. I see. Thank you. Thank you.

10 MR. HASTEN: Police Chief Delrish Moss, Lieutenant
11 Colonel Al Eickhoff, and Commander Frank McCall.

12 THE COURT: All right. Thank you, all.

13 MR. HASTEN: And, Your Honor, I'll discuss Commander
14 McCall's role as well too, but he's a recent hire to the
15 Ferguson Police Department, and he has assumed the role of
16 Consent Decree Coordinator, which we discussed last time that
17 that role had been filled on an interim basis by City Manager
18 De'Carlton Seewood and myself to some extent, and we're excited
19 to have him aboard because he's hit the ground running. He's
20 been in that position for a little less than two months, but
21 he's done a tremendous amount of work with getting up to speed
22 with what the Consent Decree requires and drafting a lot of
23 policies. And as Your Honor would note by even reviewing the
24 Consent Decree, a lot of the early foundational deadlines that
25 are coming due are policy drafting, and Commander McCall has

1 really taken the lead on that, and he's done a great job, and
2 we're very pleased with what he has done to date.

3 And additionally, we have City Attorney Apollo Carey,
4 who has also assumed the role in early October. So he's been
5 in that position for a little less than two months, and he's
6 also done a tremendous job in getting up to speed and really
7 hitting the ground running in terms of coordinating with
8 Mr. Ervin and his team and the Department of Justice and
9 ensuring that the City is cognizant of the deadlines that are
10 coming up in the Consent Decree and meeting those deadlines
11 and working towards moving towards compliance.

12 And I thought it would help for Your Honor if you
13 actually heard from Mr. Carey and he kind of updated you on
14 some things that the City has been doing since we last spoke
15 in September and some of the progress that we've made to date.

16 THE COURT: Yeah, that would be helpful. Mr. Carey.

17 MR. CAREY: Thank you, Your Honor. I appreciate the
18 opportunity. So we just recently, I think -- as you heard
19 from Mr. Hasten, I am about two months in or just shy of two
20 months in in terms of representing the City of Ferguson with
21 regard to compliance with the Consent Decree, and I think it's
22 true; I think we've made substantial progress. Obviously, we
23 still have work to do. Just yesterday, the Department of
24 Justice and the Monitor Team arrived here in Ferguson, and we
25 hammered out an agreement on two of our first policies, the

1 duty of candor for our police officers as well as the duty to
2 report misconduct, and that was -- you know, we had a really
3 good back and forth process, submitting our documents for
4 review and comment, and then just kind of sitting in a room,
5 kind of hammering out the final version of those policies.

6 We've also made some progress and some strides with
7 regard to our community policing effort. We have -- I believe
8 on the 13th of this month, our CRB ordinance, which is our
9 Civilian Review Board ordinance, will be up for its first
10 reading, and it will take two readings to pass, but the 13th
11 is a good day for us because we've gotten the language ready
12 for the CRB ordinance as well as we are starting our NPSC
13 group, which is our neighborhood policing group as well.

14 So --

15 THE COURT: Let me ask you.

16 MR. CAREY: Sure.

17 THE COURT: In the -- the CRB ordinance --

18 MR. CAREY: Yes, ma'am.

19 THE COURT: -- has that language been -- in the
20 ordinance -- been agreed to by the Department of Justice and
21 the Monitor as well as the City?

22 MR. CAREY: Yes, ma'am.

23 THE COURT: Yeah. That was one that you all hashed
24 out, as I understand it.

25 MR. CAREY: Yeah, that's right. They were actually

1 hashing that one out prior to my arrival --

2 THE COURT: Right.

3 MR. CAREY: -- and then when I came in, we pretty
4 much put some finishing touches on the language, and now it's
5 been through the wringer in terms of the Department of
6 Justice, the Monitor, and Ferguson. We're putting it up for,
7 like I said, the first reading with the City Council, and then
8 there will also be some -- you know, maybe some future input
9 from, you know, folks in the community as well.

10 THE COURT: Right, after -- yeah, after it has the
11 formal reading.

12 MR. CAREY: That's right.

13 THE COURT: Okay. And then you were mentioning the
14 Neighborhood Policing --

15 MR. CAREY: -- Steering Committee.

16 THE COURT: Steering Committee, yeah.

17 MR. CAREY: Yeah. We also have that -- you know,
18 it's in its infancy stages of organizing, but we have some
19 energized citizens, and Commander McCall, who is our Consent
20 Decree Coordinator, has been working intimately with those
21 folks to kind of get that group up and running as well.

22 THE COURT: Tell me how that group is structured.

23 MR. CAREY: Well, right now, it's a very loosely
24 structured group, and what we're --

25 THE COURT: Is that the one that it's sort of whoever

1 shows up is on the committee?

2 MR. CAREY: Well, it is in terms of -- well, let me
3 put it this way. They have to figure out how to structure
4 themselves.

5 THE COURT: Right.

6 MR. CAREY: We can make suggestions to the group, but
7 at the end of the day, the group, you know, is in control of
8 their own structure. So we have, you know, an interested
9 group of citizens, but as far as the structure, I think it's
10 still developing at this point.

11 THE COURT: Okay.

12 MR. CAREY: And, you know, that's kind of a snapshot
13 of, you know, where we are, and we're optimistic because we
14 have some policies that we've been passing back and forth.
15 We've got our background investigation policy, our recruitment
16 policy, I think, that we've got coming up today. We just had
17 a -- and one of the good things we've done -- and I think
18 maybe you'll hear from the Monitor. I don't want to steal his
19 thunder about this, but we've taken essentially what the
20 Consent Decree requires from us from a policy standpoint, a
21 policy development standpoint, and we've grouped them into
22 priorities. And so I think you'll hear from the Monitor,
23 maybe even a little bit from the Department of Justice
24 regarding how we've grouped those and how we're going to sort
25 of attack making sure we get the policy development going, and

1 then we get into implementation and training and those types
2 of things. So I'm excited about it, and I think -- you know,
3 I think you'll hear a similar thing from the Department of
4 Justice.

5 THE COURT: All right. Thank you.

6 MR. CAREY: Okay. Thank you.

7 THE COURT: Mr. Volek.

8 MR. VOLEK: Thank you, Your Honor. We appreciate
9 this opportunity to update the Court and the public on our
10 views regarding the City's efforts to implement the Consent
11 Decree. There really has been significant progress made in
12 recent months. The City has worked hard on laying the
13 groundwork that is so important for the successful
14 implementation of the Consent Decree. To be clear, we're
15 still in the early stages, and there is much work to be done,
16 and I think we all wish that we were farther along. There
17 are, for instance, some deadlines that have come and gone that
18 have not yet been met, but at the same time, work is being
19 done to lay the groundwork to make sure that those deadlines
20 are met in short order and that future deadlines are complied
21 with.

22 During the last status conference, my colleague
23 Christy Lopez laid out three different areas that were really
24 important for laying the groundwork, and I'd like to just
25 update the Court on those three areas: One, the need for the

1 City to appoint a Consent Decree Coordinator; two, the need to
2 establish a policy revision process that's effective; and,
3 three, the need to establish a process on the City's end for
4 being able to verify that the work that they are doing is
5 actually being done.

6 So I'll start with the first, the Consent Decree
7 Coordinator. As you heard from Mr. Hasten and Mr. Carey, in
8 October, Commander Frank McCall was appointed to serve as
9 Consent Decree Coordinator. This is a really critical step
10 forward. In addition to taking the ownership of the policy
11 review and revision process, Commander McCall also is serving
12 as liaison to the community groups that you heard of, the NPSC
13 and the CRB, and he's also managing the overall implementation
14 process. Before, it was the City Manager and the Chief of
15 Police who were doing that, and obviously, they have a whole
16 host of duties on their plate, and to have somebody dedicated
17 to those tasks is really critical. Commander McCall has
18 worked extremely hard over the last two months to get up to
19 speed, and he's really done an excellent job of doing that.
20 He understands what work has already been done under the
21 Consent Decree and what work still is urgently needed to be
22 done. We certainly appreciate his dedication to the
23 implementation of the decree, and we're confident that the
24 experience and commitment that he's going to bring to bear
25 will help this process.

1 His role is critical, but he makes up only one small
2 part of the overall team of the City that is responsible for
3 implementing this decree, and that team starts with the
4 leadership of City Manager Seewood and Chief Moss, both of
5 whom have really committed themselves to this process in
6 recent months. That's evident in many things but, perhaps,
7 mostly in the appointment of Commander McCall and making that
8 a command-level position. By making that a command-level
9 position in the department, it really sends a message to
10 everybody that the implementation of the Consent Decree is a
11 top priority. We had some communications with the City about
12 making sure that Commander McCall was dedicated and didn't
13 have other duties that would get in the way of his working on
14 the Consent Decree, and they were very responsive to those
15 requests. So we really appreciate that.

16 There are also a number of new hires within the City
17 that are also going to play a critical role in this process.
18 There is a new municipal judge, a new city prosecutor. We had
19 productive meetings with both of them, and they'll obviously
20 play important roles in the implementation of the court
21 provisions. There's a new human resources director.

22 And I want to take a minute to mention the hiring of
23 Apollo Carey. Mr. Carey is the City Attorney. He has played
24 a critical role in this process in the last few months as
25 well. He's there with us in the meetings when we're talking

1 about policies. He's there working with Commander McCall on
2 managing the overall process, and having a city attorney who's
3 present and willing to work so closely and collaboratively
4 with both the Monitoring Team and the Department of Justice
5 has really improved the progress that we've seen in the last
6 few months, and so we now really feel like there's a team in
7 place on the City's end to begin to increase progress even
8 more, and we really do appreciate them putting -- laying that
9 groundwork and putting those individuals in place.

10 Turning to the second issue, the development of the
11 policy review and revision process, the Consent Decree
12 requires that every one of its requirements be incorporated
13 into official FPD policy or other written directive and that
14 those policies are reviewed by the Monitoring Team and us to
15 make sure that they are consistent with the Consent Decree,
16 constitutional law, and best practices. There was a lot of
17 work being done in the last few months on setting this process
18 up. Previously, as you heard very briefly, the Chief of
19 Police was really taking ownership of drafting policies, and
20 that's not sustainable. He's got other duties, and so
21 Commander McCall coming on is a big boon to that. But there
22 was also a scattershot approach where, in their efforts to
23 make sure that they hit every single Consent Decree deadline,
24 they would be focusing on different policies at different
25 times and sending us them in batches that weren't very

1 organized, and so we've put a lot of effort -- the City has
2 put a lot of effort into making sure there is an
3 organizational structure, and so I think that the Monitor will
4 speak more to this, but we -- that began with Commander McCall
5 actually going through and doing inventory of existing FPD
6 policies, grouping those by the category within the Consent
7 Decree that they relate to, and that's very helpful so that
8 when we, let's say, tackle force, we can start with all of the
9 force policies, and so we understand the full range of
10 policies that needs to be reviewed. That's going to really
11 make the process more efficient.

12 It also identifies policies not only that need to be
13 reviewed but that need to be developed, gaps in the existing
14 FPD policy manual. And so having that organized -- taking the
15 time at the front end to organize that process is really going
16 to pay dividends at the back end. That's what we've found in
17 our experience, and so while I realize that there are some
18 deadlines that have yet to have been met, we're hopeful that
19 taking that time-out is going to be worth it in the long run.

20 We have also come up with a priority list
21 collectively for the policy review process. We have
22 prioritized the recruitment policies, then the accountability
23 policies, community engagement, then force, then bias-free
24 policing, then stops, searches, and arrests. Those are
25 flexible, of course, but those were critical areas. We

1 understood that the City was eager to begin its recruitment
2 efforts, but at the same time, we felt, as we discussed
3 briefly at the last hearing, that it's important not just to
4 race out and try and hire officers but make sure that that
5 process results in hiring quality officers after a sufficient
6 background check and making sure that there's a recruitment
7 plan in place to make sure that the outreach efforts are
8 robust and successful.

9 THE COURT: The news article this morning indicated
10 that there were complaints made by people about -- and
11 concerns raised about the number of officers on the force at
12 this time. Do you want to comment on that, and do you think
13 this recruitment effort will get -- will help?

14 MR. VOLEK: Absolutely, Your Honor. We do think it
15 will help, and that's -- just to be clear, the Consent Decree
16 requirements regarding recruitment -- it's not just things
17 that the City has to do to make sure that when they want to
18 hire somebody they follow a certain process. It also requires
19 the City to come up with an actual recruitment plan that will
20 help them increase their force and make sure that they are
21 conducting the outreach that they need to conduct, creating
22 the incentives that are necessary to attract high-quality
23 officers, such as making sure that salaries are competitive.
24 The full range of things in the recruitment plan is really
25 going to help the City make sure that they are attracting

1 highly qualified applicants.

2 At the same time, you know, making sure that the
3 background checks are actually conducted in accordance with
4 the decree is critically important as well. Making sure that
5 the officers that are brought on are qualified and making sure
6 that they receive the training that's appropriate.

7 As a second point, though, you know, that -- I do
8 think that that is going to help, and that is why we
9 prioritized the recruitment plan so high up in our order.
10 It's the first policy that we're working on precisely because
11 we understand those concerns. At the same time, the Monitor
12 is also going to be looking at current staffing allotment and
13 understanding whether there are tweaks that can be made within
14 the current staffing allotment in order to bolster the actual
15 workforce of the police department, meaning if there are
16 administrative duties that can be reassigned from sworn
17 officers to administrative staff to result in more officers
18 actually having time to actually police. So I think in tandem
19 those efforts are going to really aid that problem, but we are
20 going to continue to work on them.

21 I can just tell the Court that from our perspective,
22 from the Department of Justice's perspective, we understand
23 how -- how important this is to the City and to the community,
24 and so when we were provided with the initial draft of the
25 recruitment plan, the recruitment policy, we reviewed that in

1 short order and returned that to the City, and we're awaiting
2 a new policy revision back from them, and we will continue to
3 work on that as quickly as we can.

4 So a lot of work has been put into organizing the
5 policy review process, but there's also been work to make sure
6 that the policies that come out of that process are
7 substantively sound, that they're consistent with the decree
8 and applicable law and best practices. So there have been
9 extensive conversations between the Monitoring Team and the
10 City, Commander McCall and Mr. Carey, about what a good policy
11 looks like, making sure that it's clear, making sure that
12 before sending us a policy that the City actually goes through
13 and incorporates all of the applicable Consent Decree
14 provisions, and that's something that's going to be, quite
15 honestly, an iterative process, but I do think that those
16 conversations have been extremely fruitful.

17 We've also provided the City with a short useful
18 tool, a checklist that they can go through and make sure that
19 they've done the different things before they submit a policy
20 to us, just to speed that process along and make it more
21 efficient. The last thing we want to do is engage in a lot of
22 back and forth on things that can be done at the front end.

23 At the same time, us and the Monitoring Team have
24 worked very hard to coordinate our efforts in reviewing the
25 policies. So we've decided to review policies in tandem, in

1 coordination so that when we return a policy to the City they
2 get one set of feedback and not two sets of feedback. That
3 makes it a little bit easier for them, and it makes the
4 process more efficient.

5 I can tell you that at yesterday's meeting we sat
6 down with representatives from the City, and we discussed
7 three different policies, and those -- those conversations
8 were extremely productive. Everybody that we spoke with from
9 the City was very open to the feedback that we were giving
10 them on policies, and we were able to reach agreement on two
11 really critical foundational policies, the duty of candor and
12 the duty to report misconduct. So we anticipate that those
13 initial conversations about this process will help speed
14 everything along.

15 The third bucket that we talked about at the last
16 status hearing was coming up with a process for the City to be
17 able to establish or verify or a process for the City to be
18 able to show that they've actually done the work that they are
19 doing. This is, perhaps, the most difficult of the three --
20 of the three areas, and I think that it's the one that still
21 has the most work to be done, but there has -- there has been
22 some -- some movement on that as well. I think initially
23 there was a desire on behalf of the City to do as much as
24 possible as soon as possible, and I think that, perhaps, some
25 things were done without taking the time to actually document

1 what was being done.

2 So one example of that is the amnesty provisions
3 within the municipal court section. The former city
4 prosecutor took some actions to try and implement those
5 provisions but didn't actually go through and document her
6 work in a way that allowed the Monitoring Team to be able to
7 verify that what was actually done was done. But to the
8 City's credit, we had a very productive meeting about this
9 issue with the new city prosecutor, and the City has pledged
10 to actually go through and make sure it's done right in a way
11 that allows the Monitoring Team to verify that. So, you know,
12 it's no surprise that that's the area that -- where the least
13 has been done because that sort of comes later in the process,
14 but I can tell Your Honor that compared with where other
15 jurisdictions have been this early on in the process, within a
16 year into the Consent Decree, the City is right on track and,
17 in some places, even farther along than we would expect; in
18 some places, less far along, but we think that that progress
19 will increase.

20 I just want to make three final points. First, I
21 understand that there are deadlines that -- many of which came
22 at the 180-day mark, which was in the middle of October, and
23 that many of those deadlines have not yet been met, and it's
24 very important to us to have those deadlines because they do
25 serve as benchmarks to make sure that progress stays on track.

1 At the same time, we do feel like the City is working in good
2 faith towards reaching those deadlines, and what we want to
3 avoid is what was happening initially in this process, which
4 is the City trying to do things in a way to meet those
5 deadlines but not doing them well, and so if there comes a
6 point where we believe that those deadlines are not being
7 pursued in good faith, we will certainly let the Court know,
8 but at this time, we feel like we are in a good position and
9 it's worth taking the time to do this initial groundwork well.

10 The second thing I want to say is, you know, we're
11 talking at the status hearing about the tremendous work that
12 the City has done in recent months. I think it bears noting
13 that there are other stakeholders involved in this process
14 upon whom this process depends. The first is the Monitoring
15 Team, and Mr. Ervin and his team have really done an
16 exceptional job of -- it's fostering good communication
17 between all the parties and making sure that our work is
18 productive and goal-oriented. He and his team have played a
19 critical role in policy review, and having the views of law
20 enforcement experts like Natasha Tidwell and Chief Ed Davis
21 has really been critical and will be going forward. They've
22 also done some work on putting together the community survey,
23 which Mr. Ervin will talk about in greater detail, but that is
24 something that's going to be implemented in the near future.

25 The second group of stakeholders besides the City

1 that are doing a lot of work is members of the community, and
2 I just want to mention to Your Honor that that work is
3 continuing as well. The CRB, the Civilian Review Board Task
4 Force, is working hard, and they are very pleased to know that
5 the revised Civilian Review Board ordinance will be put up to
6 a vote very soon and that that will be initiated and set up
7 and get underway.

8 The NPSC is conducting regular meetings, and, you
9 know, the process of creating a neighborhood group is always
10 difficult, but there's benefits for going through that process
11 and having that be centered within the community group itself
12 and not sort of driven by either the United States or the
13 City, and so those meetings have been very fruitful.

14 There was also a meeting yesterday between the
15 Monitoring Team and the Ferguson Youth Initiative. That's,
16 obviously, going to be a critical group to solicit their views
17 on what the police department is actually doing on the ground,
18 and so their continued civic engagement is really tremendous.

19 Last night, there was also a meeting where Mr. Ervin
20 presented to a large number of individuals in the city of
21 Ferguson. You know, we've been in many other cities, but I
22 can say with all honesty that the specific engagement in
23 Ferguson is unmatched in our experience, and going forward,
24 that is really going to pave the way for the community's
25 continued involvement in the police department and making sure

1 that these reforms actually get implemented.

2 So overall, I think it's a positive assessment.

3 There is still a lot of work to be done. I don't think that
4 anybody is under any illusion about that, and there will
5 inevitably be bumps along the road, but we are pleased with
6 the progress and encouraged, particularly, with the progress
7 made in recent months given the new personnel that's come on
8 board for the City.

9 THE COURT: All right. Thank you.

10 MR. VOLEK: Thank you.

11 THE COURT: Mr. Ervin.

12 MR. ERVIN: Thank you, Your Honor. Good afternoon.

13 I am delighted to have this opportunity to update you on the
14 status of things from the Monitor's perspective. As you know,
15 under the Consent Decree, the Monitor and the Monitoring Team
16 have three broad responsibilities. The first is to review
17 policies, training curricula, and other written materials to
18 ensure that they conform to the provisions of the Consent
19 Decree, applicable law, and best practices. The second is to
20 conduct audits and evaluations to determine whether the
21 material requirements of the Consent Decree have been
22 implemented and, thirdly, to conduct outcome assessments,
23 including the community survey Mr. Volek mentioned to
24 determine whether the implementation of the Consent Decree is
25 having the desired effect, namely policing and the

1 administration of justice in Ferguson that comports with the
2 law.

3 I'll update you briefly from my perspective on where
4 we are with regard to each of those. I won't repeat the
5 comments of the City and DOJ with regard to the policy review
6 process except to echo that from my perspective it is
7 definitely making progress and is proceeding now in a much
8 more organized and focused fashion in large part because of
9 Mr. -- Commander McCall's being brought on board and
10 Mr. Carey. We're working very closely together, and I'm so
11 pleased that we're making such progress.

12 Just to add to a couple of things that have been
13 mentioned in passing, as Mr. Volek said, it is a dynamic and
14 iterative process -- the policy review and revision process.
15 For example, just in the course of the meeting before the
16 status hearing, we agreed that accountability is so important
17 that we're moving up the review and revision of accountability
18 policies to higher in the hierarchy than was previously the
19 case. And in terms of gaps that we note during the course of
20 this process, we have determined that there is an urgent need
21 for the City to -- for the police department to have a social
22 media policy, given how important social media is now to how
23 people communicate and live their lives, and so that too will
24 be given urgent attention by the City, by DOJ, and by the
25 Monitoring Team.

1 THE COURT: Are you talking about a policy for the
2 police force or for the City itself or for both?

3 MR. ERVIN: Really for both. Our priority right now
4 is for the City, but really for both.

5 I should mention in addition to those six priority
6 areas that Mr. Volek mentioned, we also agreed that certain
7 policies that the City -- the police department -- has right
8 now that are characterized as "core" are so fundamental to the
9 reform process that they likewise should be prioritized for
10 review, and those are the ones relating to police department
11 authority, department jurisdiction, purpose and mission, and
12 goals and objectives.

13 And the final thing I will say that has not been
14 mentioned previously about the policy review and revision
15 process is that the City requested recently, commendably, I
16 think, that there be a front-end conversation between them,
17 the Monitor, DOJ to give them our thoughts beforehand, at
18 least in a general way, about what a policy should contain,
19 not only to make sure that it conforms to the Consent Decree
20 and law and best practices but to talk through these policies
21 in a philosophical general way so as to avoid our having more
22 extensive comments at the back end than might otherwise be the
23 case. As I said, I think it was commendable that the City
24 made that request. I was delighted to honor it from our
25 perspective and DOJ likewise, and we've already begun that

1 process. So overall, I think it's going to proceed, as I say,
2 much more smoothly, and we look forward very much -- all the
3 members of the Monitoring Team -- to continuing to participate
4 in that process.

5 You haven't heard much about the other two aspects of
6 the Monitor's work. So let me spend most of my time talking
7 about that. With respect to evaluations and audits, as I say
8 in the Initial Monitor Work Plan that was filed late
9 yesterday, I'm not in a position now, as the Consent Decree
10 contemplates, to lay out a schedule for reviewing each
11 provision of the Consent Decree because relatively few
12 provisions have been implemented already and also it's not
13 feasible because of that to give a timeline that is definitive
14 or approaches being definitive. But that said, there are
15 three things that we think are far enough along such that it
16 does make sense now to do an evaluation and audit, and we can
17 certainly supplement them and update them as time goes by.

18 The first is municipal court reform. The City
19 represents to us that a lot has already been done with regard
20 to municipal court reform, and so in the next couple of weeks,
21 Kim Norwood, who's here, a member of the team who is a local,
22 as you know, Your Honor, law professor at Washington
23 University Law School, is an expert, among other things, on
24 municipal court reform. And Natasha Tidwell, who is here, a
25 former police officer herself, a former law professor, a

1 former prosecutor, a current private law practitioner -- they
2 together will undertake this work. In certain cases, it's
3 simply a matter of our confirming that certain old ordinances
4 have been repealed and replaced with other ordinances. In
5 other cases, it's a question of our confirming that certain
6 process changes have been made, for example, moving oversight
7 of the municipal court system from the City Finance Director
8 to the St. Louis Circuit Court and to the Missouri Supreme
9 Court. Another example is revising the online payment system
10 so as to allow for late payments, payment plan installments,
11 and all other court payments to be made online except where
12 online payments are illegally prohibited. In other cases, it
13 will be a question not just of reviewing documents or
14 confirming that process changes have been made but also the
15 team members observing court proceedings to make sure, for
16 example, that those with business before the court are
17 apprised of their rights and their options, the option of
18 paying a fine in lieu of serving time, the option of community
19 service in lieu of paying a fine, et cetera, and so I'm very
20 pleased that that work will be underway shortly.

21 The second -- and Mr. Volek alluded to this -- is an
22 assessment, a preliminary assessment, of police staffing. As
23 you know and as you've heard previously, there is a great
24 challenge for the City because of the relatively small number
25 of officers now from a high of 54 in the summer of 2014 to

1 about 36 down, and it's a perennial challenge for the City,
2 given that small number of officers, to engage in community
3 policing, which ultimately is what the Consent Decree is all
4 about, and also to engage in the training that's necessary in
5 order for police officers to know how to carry out community
6 policing. And so, as you heard from Mr. Volek, Commissioner
7 Davis, the former head of the Boston Police Department and the
8 Lowell Police Department in Massachusetts, and Ms. Tidwell
9 will begin actually today -- Commissioner Davis could not be
10 with us today because of illness, but he arrives tonight, and
11 the work will continue tomorrow when he's here, but they will
12 begin that work this week, and the idea is whether there are
13 certain changes in policies, in protocols, in scheduling such
14 that even with 36 officers, nonetheless, officers can be freed
15 up to do community policing and to do training. And so I look
16 forward to apprising the Court of the outcome of that
17 assessment.

18 The third area of assessment and evaluation at this
19 point is community engagement. As you know and as we have
20 discussed, a lot of work has been done, commendably, by the
21 City to promote more positive engagements between the City
22 generally, the police department in particular, and
23 established community groups like the Civilian Review Board
24 Task Force, the Neighborhood Policing Steering Committee, the
25 Youth Advisory Board that we met with last night, as Mr. Volek

1 mentioned, and various neighborhood associations. I should
2 mention that there is tremendous interest in the community in
3 getting like associations established with regard to the
4 various apartment complexes in Ferguson, and I will be working
5 intensively with the City to make sure that happens. I heard
6 a lot about that in the community meeting last night about
7 which more later --

8 THE COURT: We're -- okay. I was going to ask you
9 about that, but I'll wait --

10 MR. ERVIN: Okay, Your Honor.

11 THE COURT: -- if you're going to say more.

12 MR. ERVIN: In terms of output assessments, outcome
13 assessments, that's the last thing that the Monitor is to
14 focus on. With input from the City, from community groups,
15 from the Department of Justice, of course, as Mr. Volek
16 alluded to, we have finalized a version of the first survey
17 that we are going to distribute, namely, one with regard to
18 community attitudes toward the police department and toward
19 the municipal court system, and we anticipate administering
20 that in early January. The plan had been to do that in
21 December before the holidays. As a practical matter, it makes
22 more sense, it seems to us, to do that after the holidays but
23 as early in January as possible. As you know, Your Honor,
24 I've been in some discussions with Washington University Law
25 School about that and had a discussion as recently as last

1 week with one of the deans there, and I'm confident that there
2 will be student volunteers who will help us distribute that
3 survey. And it's important, needless to say, that it'd be
4 distributed sooner rather than later because the idea is that
5 that'd be distributed so that we, the Monitoring Team, have a
6 baseline assessment of what these attitudes are with the hope,
7 of course, that going forward over the course of the
8 monitorship there are improvements in citizens' attitudes
9 toward the police department and toward the court system.

10 Other surveys are called for in the Consent Decree.
11 As you know, one of the police department. That is nearly
12 finalized, and we anticipate distributing that after the
13 community survey is distributed. And the Consent Decree also
14 calls for an assessment, a survey of attitudes of court
15 personnel and also of detained arrestees in Ferguson, and we
16 will develop -- we, the Monitoring Team and our consumer
17 survey expert, will develop either a discrete survey for those
18 two groups or tailor a version of the community survey for
19 them, but more to come on those two.

20 The other aspect of outcome assessments is
21 determining whether the City has currently data which we can
22 use to make a baseline assessment of whether -- for example,
23 relevant statistics, like the number of stops and searches and
24 citations and arrests and use of force by race, ethnicity,
25 gender, sexual orientation, mental or physical disability, and

1 other protected characteristics so that we can see over time
2 whether such encounters between the police department and
3 citizens are more proportionate with the demographics of the
4 city. If I have one major frustration so far, it's that it's
5 been so difficult to extract this data from the City's vendor.
6 As you know, I'm sure, Your Honor, the City relies on an
7 outside vendor, ITI, for this information. It took some
8 months, but the Monitoring Team has now gotten access to that
9 database, but we still cannot see the data in the same way the
10 City can, and that's important so that we can extract it and
11 analyze it. Commendably, the City has been working very hard
12 to break that log jam. Some additional costs will likely be
13 involved, and so we're -- I am working very closely with the
14 City to make sure that we have access to that data sooner
15 rather than later. It's absolutely critical that we have it
16 so that, again, we can chart progress, we hope, going forward
17 in that regard.

18 The final thing I'll talk about is my own efforts and
19 that of other members of the Monitoring Team to engage with
20 the community. That's critically important. During the
21 course of the application process and at the first status
22 hearing, I pledged that I would be here at -- in Ferguson
23 on -- every six weeks or so irrespective of our quarterly
24 status hearings, and I have kept to that schedule generally.
25 I was last here, as you know, in early November. I will next

1 be here in about six weeks or so, and I have tried a mix of
2 things in each of those visits to see as many community
3 members as possible. I've experimented with setting aside
4 time on a given night to see citizens either individually,
5 one-on-one, or in small groups, 15-minute blocks, recognizing
6 that that's not a lot of time, that it's arbitrary entirely,
7 but the reason for that is to provide for as many meetings as
8 possible since I --

9 THE COURT: Right.

10 MR. ERVIN: -- can't be here indefinitely. That's
11 worked somewhat well, at least for those people who have had
12 an opportunity to see me. Last night, for the first time,
13 though, we did a town hall meeting, and I was so pleased that
14 there was a terrific turnout. I'd say there were 50 to 75 or
15 so people at least. That meeting was convened jointly by the
16 Human Rights Commission, the Civilian Review Board Task Force,
17 and also the Neighborhood Policing Steering Committee. The
18 bulk of the agenda was turned over to me to give an update on
19 where we are, and I essentially gave the same report to the
20 community that I'm giving in open court today, and there was
21 an opportunity at the end, at least 30, 45 minutes or so,
22 perhaps, an hour, for citizens to ask additional questions of
23 me. Questions were submitted to me in advance which I
24 answered in the formal session, and then I answered informal
25 questions afterwards, and I think that was a very good

1 opportunity for the City to hear from me and for me to hear
2 from the City.

3 There was frustration. There is an intense interest,
4 as Mr. Volek said, on the part of citizens that this Consent
5 Decree process move along, that the provisions of the Consent
6 Decree be implemented. I think, like he and like the City,
7 that it's a very good thing that the City, that the community
8 is as engaged as it is, and I will look for other ways to be
9 more involved in the community and give them an opportunity to
10 engage with me.

11 I should hasten to add that at least one member of
12 the team is local, Ms. Norwood, and she's agreed to be our
13 local designee here and the go-to person between my absences,
14 but citizens have been given my email address, my telephone
15 number. They've been encouraged to contact me, and the
16 mechanism which I think will most facilitate that
17 communication is a website which you know we have now
18 established, www.fergusonmonitorship.com, and a colleague of
19 mine is here to, at your request, debut that system.

20 THE COURT: Right. Yeah. No. I'm looking forward
21 to seeing it.

22 MR. ERVIN: Great.

23 THE COURT: Let's see. There's a mark on the screen.
24 Can you look at your monitor? See that red?

25 MR. ERVIN: Yes.

1 THE COURT: You have to do that, I think.

2 MR. ERVIN: Oh, would you mind, Your Honor, if my
3 assistant did that?

4 THE COURT: No. That's fine.

5 MR. ERVIN: Ms. Katz from my law firm, who is our
6 technical --

7 THE COURT: That's not -- it's something that -- it's
8 a touchscreen thing. It gets changed over here at the
9 touchscreen.

10 MR. ERVIN: Go ahead.

11 MS. LAUREN KATZ: No. In front of you here.

12 MR. ERVIN: Oh, great.

13 THE COURT: There you go.

14 MR. ERVIN: Good.

15 THE COURT: That's all. I was just asking you to
16 take that off.

17 MR. ERVIN: Oh, sorry. Okay. Is that --

18 THE COURT: Yeah, because you can annotate that. The
19 monitor in front of you can be annotated --

20 MR. ERVIN: I see.

21 THE COURT: -- and it can be annotated accidentally.
22 If you hit the screen, it marks, makes marks. So that's
23 probably what happened. Okay.

24 MR. ERVIN: Would you like Ms. Katz just to do --

25 THE COURT: Yeah.

1 MR. ERVIN: -- a quick review?

2 THE COURT: Yeah.

3 MR. ERVIN: The one thing I will add before she
4 begins is that the work plan that was filed last night will be
5 the first report that appears on the website.

6 THE COURT: Okay.

7 MR. ERVIN: Just briefly.

8 MS. LAUREN KATZ: Yes. Sure, absolutely. Here, we
9 are --

10 THE COURT: Can you identify yourself for the record
11 please?

12 MS. LAUREN KATZ: Absolutely. I'm Lauren Katz. I
13 work at Squire Patton Boggs with Mr. Ervin.

14 Here, we have set up our Independent Monitor site,
15 fergusonmonitorship.com. At this point, we have loaded a bit
16 of information, and this will be -- as we get more information
17 and more documents, we will be adding to the site. The home
18 site, obviously, has an overall information on what the
19 monitorship is. Then we also have -- oh, I might actually --

20 THE COURT: You can't navigate the computer from
21 there. I mean you could have plugged it in there. I don't
22 think anybody understood quite what you were planning to do.

23 MS. LAUREN KATZ: If I can be heard from here --

24 THE COURT: Yeah. Just keep your voice up.

25 MS. LAUREN KATZ: -- under "Reports" -- absolutely --

1 we'll be outputting our reports and supplemental reports as
2 they come in.

3 Under "News & Events," we have here, obviously, the
4 information of this visit here to allow community members
5 to -- to know when -- when the team will be in town and when
6 things will be happening.

7 THE COURT: Okay. And just so you all -- if you wish
8 to, anytime I set a hearing, you can certainly include that on
9 your website. If you want to include a copy of the order or
10 just put it up, you can. The court has a website as well. I
11 have to tell you that I forgot to get this hearing listed on
12 that website, and that's why it wasn't listed because I forgot
13 because it's not automatic. It doesn't tie into our docketing
14 system or anything. It's something --

15 MR. ERVIN: Right.

16 THE COURT: -- somebody has to remember, and I forgot
17 to do it. So we'll make sure we don't make that mistake
18 again.

19 MR. ERVIN: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 MS. LAUREN KATZ: Under "Key Documents," we have
22 publicly available the orders and consent decrees thus far,
23 and we will keep adding as appropriate.

24 Under "About Us," we have information about all of
25 the named monitors here so all the community will become more

1 familiar with them, and most importantly, we have the
2 "Comments/Questions," which actually allows people online to
3 write messages that go directly to Mr. Ervin with information
4 that he can respond to.

5 MR. ERVIN: Thank you, Ms. Katz.

6 THE COURT: Okay. Thank you.

7 MR. ERVIN: And already, Your Honor, I will just
8 close by saying I've already begun to receive some comments,
9 and so I think it's going to be a very useful tool.

10 THE COURT: When did the website go live?

11 MR. ERVIN: It went live, I believe, last night.

12 THE COURT: Oh, okay.

13 MR. ERVIN: Yeah.

14 THE COURT: All right. Good. And you told everybody
15 about it, I assume, at the meeting; right?

16 MR. ERVIN: I did, yes, absolutely.

17 THE COURT: Yeah.

18 MR. ERVIN: And I believe that the City will make a
19 reference to our website, and in every further communication
20 we have, of course, we will urge people to take advantage of
21 it.

22 THE COURT: Okay. That sounds good.

23 So tell me about how you're going to -- how
24 neighborhood -- how you get neighborhood organizations set up
25 in the apartment complexes because that is part of the Consent

1 Decree too.

2 MR. ERVIN: It is part of the Consent Decree. That's
3 one of the City's obligations.

4 THE COURT: Right.

5 MR. ERVIN: And we have not focused on that a lot to
6 date, frankly, Your Honor, but as I say, last night, I heard
7 that that was a real frustration, at least on the part of
8 certain people in the community, and so it's very, very
9 important, indeed, and so I will work -- other members of the
10 Monitoring Team will work with the City to try to facilitate
11 that. Certainly, we are mindful of apartment complexes during
12 the -- as we contemplate the distribution of the community
13 survey. We want to make sure, needless to say, that apartment
14 residents -- their views are taken into account, and so our
15 plan there had been to actually go physically to those
16 apartment associations and physically administer the survey to
17 them. I have gotten the name of someone in St. Louis who has
18 an affiliation with apartment complexes in Ferguson, and I
19 have used her as a liaison to try to set up appointments for
20 me with people in the apartment complexes to facilitate that
21 process. So I'm going to focus on that a lot when I return to
22 Washington.

23 THE COURT: Okay. All right. What else?

24 MR. ERVIN: That's it for me, Your Honor.

25 THE COURT: Okay. Anything -- so let me ask you

1 this, Mr. -- either Mr. Carey or Mr. Hasten. What is the City
2 going to do to try to facilitate the formation of these
3 neighborhood groups in the apartment complexes, or have you --
4 what have you got in mind, I guess, is really the question.

5 MR. CAREY: Thank you, Your Honor. That's actually a
6 complex question.

7 THE COURT: Right.

8 MR. CAREY: As you know, it's not historically the
9 purview of a city to help to form neighborhood groups.
10 Typically --

11 THE COURT: No. And, typically, that would be a
12 reason to be suspicious if the City were coming in forming
13 neighborhood groups. Right.

14 MR. CAREY: So, you know, what we've been doing so
15 far is to try to be as helpful to the Monitoring Team as
16 possible in terms of contacting some of these neighborhood
17 leaders and folks that are within the apartment community.

18 Here in St. Louis, we do have a metropolitan
19 St. Louis Apartment Association, all right, and so what I was
20 able to do was to pass some of that information or the
21 Executive Director's information on to the Monitor, and the
22 thought process being that the apartment association would be
23 able to identify some of its Ferguson members to then maybe
24 have them engage with the Monitor and with the City and have
25 discussions. I imagine this would be -- the process would --

1 from our perspective, would be something similar to the NPSC
2 situation where, you know, the City will do what it can to
3 facilitate these organizations and encourage them to form and,
4 you know, give them what we can in terms of advice and
5 reasonable resources to help them. You know, it's still an
6 issue for discussion within the City as to how far, you know,
7 the City, you know, should go or would go. Obviously, we want
8 to comply with the Consent Decree and whatever it requires us
9 to do, but it's just something that I think is kind of, you
10 know, for lack of a better phrase, a first impression type
11 situation --

12 THE COURT: Right.

13 MR. CAREY: -- in terms of a city getting involved
14 with the formation of neighborhood groups.

15 THE COURT: You know, part of what made me -- one of
16 the things I was thinking about is in the St. Louis
17 metropolitan area, since we are a metro area of neighborhoods
18 and everybody talks about what neighborhood they're from,
19 there are so many neighborhood organizations, and yet I am
20 sure there are many citizens who have never been involved in
21 any of those neighborhood organizations because they just --
22 you know, most people probably haven't. But there are people
23 who have been involved in neighborhood organizations all over
24 the metro area who might be able to give advice to fellow
25 citizens. I'm thinking -- you know, I know there's a group of

1 young people downtown -- I read about them in the newspaper --
2 who live downtown, and they do stuff and get together, and
3 there are many neighborhoods who have neighborhood
4 organizations. Some neighborhoods have multiple organizations
5 that meet on a monthly basis. And for -- you know, it's just
6 things. They have evolved over time organically. So this is
7 different because you're trying to start one from the top
8 down, which is not the way these things usually work, but
9 maybe some of the leaders in those communities could provide
10 assistance to the citizens in Ferguson about how to go about
11 it.

12 MR. CAREY: I certainly think it would be helpful for
13 us to reach out to some of those organizations. You know,
14 quite frankly, we're going to need to because we don't have a
15 blueprint. You know, obviously, with the apartment community,
16 we're dealing with a different demographic in terms of the
17 transient nature of folks in apartment complexes, and not that
18 folks in apartments aren't necessarily vested in a community,
19 but you do have that transient element that you're dealing
20 with, and in terms of the interest and the sustained interest,
21 of course, you may have one or two folks or a group of folks
22 who are, you know, focused and have a sustained and a
23 maintained interest in what goes on from a policy standpoint
24 with the City, but by and large, the entire apartment
25 community, you do have that transient issue to deal with.

1 So --

2 THE COURT: All right. I understand that, and I'm
3 just suggesting that the city of St. Louis has, obviously, got
4 a lot of apartment dwellers also and renters, and in many of
5 the neighborhoods like downtown --

6 MR. CAREY: Right.

7 THE COURT: -- people are involved even though
8 they're renters, and so, you know, there may be -- there may
9 be just other people who might be able to give assistance in
10 how to get started. That's all I'm saying.

11 MR. CAREY: I think that's part of the plan because,
12 like I said, we don't have a blueprint.

13 THE COURT: Yeah.

14 MR. CAREY: So we're happy to reach out to folks in
15 some of the neighboring suburbs and even the city of St. Louis
16 to figure out how we go about doing that.

17 THE COURT: Right. I mean it just strikes me as one
18 of the things in the Consent Decree that's basically saying
19 you're going to do something that's not a natural thing for a
20 city to do --

21 MR. CAREY: Right.

22 THE COURT: -- as opposed to most of the other things
23 in the Consent Decree that are definitely things that are
24 normal city responsibilities or police department
25 responsibilities.

1 MR. CAREY: Yes, ma'am. Absolutely. That's
2 definitely a conversation we're having, and again, we'll do
3 whatever we can to work with the Department of Justice and the
4 Monitor to make sure we comply. I mean that's, obviously,
5 what we're here for.

6 THE COURT: Right. Okay. Well, and it sounds to me
7 based on what sounds like the comments last night at the
8 meeting it's something that there's a need for and a desire.
9 Probably many people would be interested in working on that, I
10 would suspect.

11 MR. CAREY: Yes, ma'am.

12 THE COURT: Okay. Anything further from the
13 Department of Justice?

14 MR. VOLEK: No, Your Honor. I just want -- on the
15 apartment complexes point, I just wanted to say that I agree
16 with what Mr. Carey said, that it's a fine line to walk. You
17 really do want that to be community-centered.

18 THE COURT: Right.

19 MR. VOLEK: And the Consent Decree reflects that by
20 saying that the City will assist with that.

21 I think learning from other organizations is
22 critically important. I think that educating people about the
23 utility of what a neighborhood association can do and making
24 sure that actually these associations are able to provide
25 meaningful input into the Ferguson Police Department and that

1 that input is considered by the Chief and whatnot will help
2 cultivate some enthusiasm for the group.

3 And finally, I think that placing that effort in a
4 broader context of community outreach to the apartment
5 complexes is really important. This is an area Ferguson has
6 not sort of had the best relationships with the City, and I
7 think, you know, by making it clear that this is not just
8 about creating a neighborhood association but by making sure
9 that there's all sorts of outreach efforts toward the
10 apartment complexes, I think that's very important.

11 So on that point, that's just a few thoughts, and
12 otherwise, we don't have anything else to add.

13 THE COURT: Okay. Well, thank you, and I -- it
14 sounds like you are making progress, and, you know, I think
15 there are -- the Consent Decree had ambitious timelines in it,
16 but I think that it sounds like now you're finally in a
17 position where things are really beginning to move and those
18 timelines can be met now that you have the personnel in place,
19 and I'm pleased to see that you've really moved forward on
20 that.

21 So I think -- you know, I think the City sounds like
22 it's doing what it ought to be doing at this point. And keep
23 moving. It's a lot of work to be done. Everybody's got to
24 keep the momentum going.

25 I will schedule another status conference in about --

1 probably, I guess, in early March, right, to, you know, try to
2 hear where you are at that point, and if you need anything
3 from me, obviously, you know what to do and where to find me.

4 Okay. All right. Thank you, all, very much.

5 And court is in recess.

6 (Proceedings concluded at 1:56 p.m.)

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 43 inclusive.

Dated at St. Louis, Missouri, this 12th day of January, 2017.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter